

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of

JAN 11 1999 )

Federal-State Joint Board on )  
Universal Service )  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY )

CC Docket No. 96-45

COMMENTS OF  
RAND MCNALLY & COMPANY

Rand McNally & Company ("RMC") hereby submits the following comments to the Commission in response to the Notice of Proposed Rulemaking portion of the above-captioned proceeding.<sup>1</sup> More particularly, RMC cautions the Commission against adopting any rule that would employ RMC's proprietary MTA Listings as a boundary for determining whether CMRS traffic should be classified as interstate.<sup>2</sup>

RMC does not object to such use by existing PCS, 800 or 900 MHz SMR or other licenses for whose services RMC has authorized to use the MTA listings for licensing purposes, under the licensing agreements that have been entered covering such specific services and frequencies. But no such permission has been granted by RMC for use by the Commission or its licenses for cellular and other wireless services that have been licensed on the basis of other geographic designations. Accordingly, the broad use of RMC's proprietary MTA listings with respect to all CMRS services, regardless of any licensing authority from RMC, constitutes an infringement of RMC's copyright, both directly by the Commission's use, and indirectly by encouraging Commercial Mobile Radio Service "CMRS" licensees to infringe on RMC's property right.

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<sup>1</sup> Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (released Oct. 26, 1998) (the "Notice").

<sup>2</sup> Notice at ¶ 32.

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**I. THE COMMISSION MAY NOT USE THE MTA LISTINGS WITHOUT RMC'S CONSENT.**

As the Commission has recognized, RMC is the copyright owner of the MTA Listings.<sup>3</sup> Neither the Commission nor any of its licensees may make use of the MTA geographic boundaries without RMC's consent.

While RMC has, with the Commission's knowing encouragement, entered into licensing agreements for the use of MTA Listings in connection with the licensing of other services, including some that are regulated as CMRS by the Commission, the licensing agreements under which the Commission (and others) have been issued authority to employ the MTA Listings have been clearly limited to specific licensed services and frequency bands, authorized under specific proceedings, e.g., PCS, 800 MHz SMR, or 900 MHz SMR, and do not cover other CMRS services, such as cellular.. These agreements do not in any way permit or suggest that these Listings may be used by the Commission or its licensees for other services, a limitation that the Commission has recognized on several occasions.<sup>4</sup>

Yet, despite RMC's considerable copyright interest in its MTA Listings and the lack of any agreement or grant of permission to the FCC or anyone else to use these Listings in its general CMRS regulations, the Commission's proposed CMRS traffic rules make use of the MTA Listings and encourage Commission licensees to do as well. See note 2, supra. The Commission's Notice does not even attempt to explain the basis upon which the Commission, much less its licensees, might purport to have rights to use RMC's copyrighted MTA Listings for this purpose, nor could any cogent explanation be offered.

In the absence of a license agreement with RMC that authorizes such use, the Commission should limit its use of RMC's MTA designations to matters involving the licensing and operation of specific services for which the MTAs have been licensed for use by the Commission and its licenses.

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<sup>3</sup> See, e.g., Report and Order and Second Notice of Proposed Rule Making, Amendment of Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, 12 FCC Rcd. 18600, 18610 n.32 (1997) ("39 GHz Order"); Report and Order, Amendment of Parts 21 and 74 of the Commission Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, 10 FCC Rcd. 9589, 9608 (1995) ("MDS Order").

<sup>4</sup> Id.

**II. THE COMMISSION MUST PUT AN END TO ITS CONTINUING AND EXPANDING INFRINGEMENT OF RMC'S COPYRIGHT INTERESTS.**

This is not the first time the Commission has infringed on RMC's copyrighted MTA and BTA Listings, nor is it the first time that RMC has asked the Commission to cease and desist such practice. More than two years ago, the Commission used RMC's MTAs in adopting rules for reciprocal compensation for CMRS providers. See First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 16014 (1996). RMC's Petition for Reconsideration objecting to this unauthorized use (a copy of which is attached for reference) has languished with the Commission since it was filed at the end of September 1996. And, just within the last two weeks, the Commission compounded the problem by employing RMC's MTAs for purposes of defining telephone exchange calls for CMRS carriers. See Memorandum Opinion and Order, Policy and Rules Concerning the Interstate Interexchange Marketplace, FCC 98-347 CC Docket No. 96-61 (December 31, 1998), ¶¶ 22-24.

The Commission has also infringed, and proposed rules that would further infringe, on RMC's copyright interests in numerous rules and proposed rules regarding the partitioning of licenses along MTA or BTA boundaries, all without RMC's consent or any apparent consideration by the Commission of RMC's copyright interests. RMC has many pending petitions for reconsideration and comments warning the Commission against such infringement. See, e.g., RMC's Petition for Reconsideration and Request for Expedited Action in PR Docket No. 89-552 (220-222 MHz), filed October 13, 1998; RMC's Comments in ET Docket No. 94-124 (Wireless Communications Service), filed September 21, 1998; RMC's Comments in WT Docket No. 98-169 (218-219 MHz -- IVDS), filed October 28, 1998. RMC has also for months been warning the Commission that its proposal to leave it to the "industry" to work out copyright licensing arrangements for the use of RMC's proprietary BTA Listings for 39 GHz licensing, see 39 GHz Order, supra, will not work without direct involvement of the Commission, all to no avail.

It should be recognized, moreover, that while RMC has never asked that its Listings be used by the Commission, when such use has been proposed or mandated by the Commission, RMC has worked cooperatively with the Commission and relevant industry groups to reach licensing agreements on fair and non-discriminatory terms. RMC remains willing to license the use of MTA Listings on reasonable terms.

But RMC will not permit its property to be appropriated without just compensation and due process of law, and will take all necessary steps to remedy any unauthorized exercise of its copyright by the Commission or any other party.


### III. CONCLUSION.

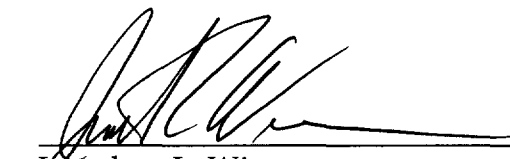
The Commission has no right nor authorization to use, or encourage others to use, the MTA Listings for estimating levels of usage by licenses in services for which the use of MTAs has not been authorized by RMC. Absent a license agreement permitting such use, the Commission should not infringe upon these rights.

On a broader policy level, the Commission must understand that ignoring RMC's copyright interest will not make it go away. Rather, as the Commission's infringement expands, so does the damage that is caused for which redress will have to be made.

Respectfully submitted,

RAND MCNALLY & COMPANY

By:   
Sharon Kohn  
Assistant General Counsel  
RAND MCNALLY & COMPANY  
8255 North Central Park  
Skokie, Illinois 60076

By:   
Jonathan L. Wiener  
GOLDBERG, GODLES, WIENER  
& WRIGHT  
1229 Nineteenth Street, NW  
Washington, DC 20036  
(202) 429-4900

Counsel for Rand McNally & Company

January 11, 1999

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions in the Telecommunications Act )  
of 1996 )  
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Interconnection between Local Exchange ) CC Docket No. 95-185  
Carriers and Commercial Mobile Radio )  
Service Providers )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

**PETITION FOR RECONSIDERATION  
OF RAND McNALLY & COMPANY**

Rand McNally & Company ("RMC"), in accordance with 47 C.F.R. 1.429, submits this Petition for Reconsideration of the First Report and Order adopted by the Commission on August 8, 1996, in the above-referenced proceeding (the "Order"). RMC requests that the Commission reconsider the Order insofar as it mandates use of RMC's Major Trading Areas ("MTAs"), without RMC's consent, to define the local service area for calls to or from a commercial mobile radio service ("CMRS") network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act").

RMC is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").<sup>1</sup> The Commission expressly has acknowledged this fact each time it has proposed or mandated use of MTAs or BTAs in the past.<sup>2</sup>

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<sup>1</sup> The MTA/BTA Listings and the MTA/BTA Map are referred to collectively herein as the "MTA/BTA Listings."

<sup>2</sup> See, *inter alia*, In the Matter of Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Fixed Service, Report and Order, MM Docket No. 94-131 (rel. June 30, 1995) at ¶ 35; In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Notice of Proposed Rule Making, WT Docket No. 96-18 (rel. Feb. 9, 1996) at ¶ 35.

Notwithstanding the Commission's consistent recognition of RMC's copyright interests in the MTA/BTA Listings in the context of every other proceeding in which the use of MTAs and BTAs has been proposed, the Order adopts MTAs without any mention of RMC, let alone RMC's protectible ownership interest in the MTA/BTA Listings.

As is implicit in the Commission's previous discussions of the MTA/BTA Listings, the Commission has no authority to make use of such listings without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not propose use of MTAs in the instant proceeding nor has it done so in any other Commission proceeding. If the Commission mandates use of MTAs or BTAs absent a license from RMC, it will amount to an unlawful taking of RMC's property. All parties to the relevant proceedings, and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and the MTA/BTA Map without RMC's consent, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of RMC's copyright.

It is important to note that, each time in the past that the Commission has proposed or mandated use of MTAs and/or BTAs, RMC has cooperated fully and in good faith with the Commission and other interested parties to enter into licensing agreements on fair and non-discriminatory terms to permit such parties and the Commission to make use of the MTA/BTA Listings. In this regard, RMC has entered into licensing agreements with the Personal Communications Industry Association, the American Mobile Telecommunications Association, and the Wireless Cable Association International allowing interested parties to use the MTA/BTA Listings — in accordance with the terms and conditions of such agreements — in connection with the following services: 2 GHz broadband PCS, 900 MHz narrowband PCS, 800 MHz SMR, LMDS, 900 MHz SMR, and MDS.

In light of RMC's demonstrable willingness to work with the Commission and its licensees in the past, as well as the Commission's consistent recognition of RMC's copyright interest in the MTA/BTA Listings, the failure in the Order to recognize expressly RMC's rights and the need to obtain RMC's consent prior to adoption of use of MTAs in connection with Section 251(b)(5) of the Act is deeply troubling, not to mention an unlawful infringement of RMC's rights.

For this reason, RMC urges the Commission to reconsider its decision to use MTAs in the Order and, in doing so, to:

- (i) make clear that RMC is the copyright owner of the MTA/BTA Listings;
- (ii) state plainly that the use of MTAs as geographic boundaries to define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5) of the Act — or, indeed, for any other purpose not covered by a license from RMC — cannot proceed without a license from RMC;
- (iii) note that there is presently no license in place covering the use of MTAs by all interested parties in connection with Section 251(b)(5);
- (iv) undertake to enter into such an agreement with RMC or encourage other interested parties to contact RMC to explore a licensing arrangement; and
- (v) state that the use of property in which RMC has a copyright interest without RMC's prior consent will result in copyright infringement and will expose such user to a claim of copyright infringement.

Such action is fully consistent with the Commission's actions in connection with other services for which the use of MTAs or BTAs have been proposed or adopted.<sup>3</sup> If the Commission and/or other interested parties are unwilling to enter into a license agreement with RMC in the context of this proceeding, then the Commission should select different geographic boundaries for the purposes of Section 251(b)(5). In no event can RMC permit its property to be appropriated by fiat.

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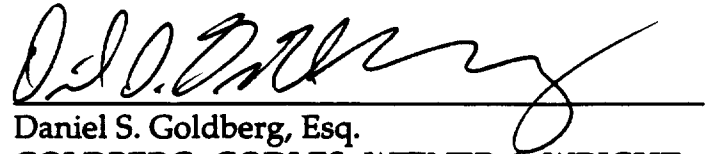
<sup>3</sup> Id.

For the foregoing reasons, RMC urges the Commission to reconsider the Order in a manner consistent with this Petition for Reconsideration.

Respectfully submitted,

RAND McNALLY & COMPANY

By:

  
Daniel S. Goldberg, Esq.  
GOLDBERG, GODLES, WIENER & WRIGHT  
1229 Nineteenth Street, NW  
Washington, D.C. 20036  
(202) 429-4900

Counsel for Rand McNally & Company

September 30, 1996